

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEMETRIUS BAILEY,)	
)	Civil Action No. 09 – 900
Plaintiff,)	
)	District Judge Donetta W. Ambrose
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
PA CHRIS MEYERS, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

1. Before this Court is Plaintiff's motion to reopen this case and vacate the Court's order dated November 23, 2009, denying him leave to proceed *in forma pauperis* and closing the case. (ECF No. 4.)

2. On November 23, 2009, this Court denied Plaintiff's motion to proceed *in forma pauperis* in accordance with to 28 U.S.C. § 1915(g) and dismissed this action for Plaintiff's failure to pay the filing fee. However, Plaintiff was allowed to reopen the case by paying the full filing fee within sixty days, which he did not do. The denial of *in forma pauperis* status was because Plaintiff had accumulated at least three "strikes" since he had at least three prior actions dismissed either as frivolous or for failure to state a claim upon which relief may be granted. He further failed to allege that he was under imminent danger at the time the complaint was filed, the exception to the "three strikes rule," codified at 28 U.S.C. § 1915(g).

3. The basis for Plaintiff's motion to reopen is the Third Circuit's recent opinion in Victor v. Lawler, C.A. No. 13-2453 (3d Cir. Sept. 5, 2013), wherein the court found that Plaintiff has accumulated only two strikes. For several years, this Court, as well as other federal courts in

Pennsylvania, has been operating under the assumption that Plaintiff has three strikes. Indeed, the Third Circuit itself has also denied Plaintiff *in forma pauperis* status based on the same belief. See Victor v. Lawler, C.A. No. 10-2728 (3d Cir. May 25, 2011).

4. Given this recent change of events, Plaintiff now moves to reopen this case and have the Court vacate its order denying him *in forma pauperis* status.

5. Plaintiff's motion to reopen this case and to vacate the Order denying him leave to proceed *in forma pauperis* (ECF No. 4) is **GRANTED**. The Order denying him leave to proceed *in forma pauperis* and adopting the Report and Recommendation (ECF No. 3) is hereby **VACATED**. However, in order to determine whether Plaintiff is entitled to proceed *in forma pauperis*, he must submit another motion along with the supporting paperwork. When submitting a motion to proceed *in forma pauperis*, an inmate is required to submit "an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). In addition to the aforementioned affidavit, the inmate is further required to "submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined." 28 U.S.C. § 1915(a)(2).

6. Plaintiff shall file a new motion for leave to proceed *in forma pauperis* within twenty-one (21) days of the date of this order; otherwise, this case will be dismissed for his failure to prosecute.

7. Plaintiff also requests a copy of his complaint. That request is **GRANTED** and the Clerk is directed to mail Plaintiff a copy of his complaint docketed at ECF No. 1-1.

DONE AND ORDERED this 12th day of November, 2013.

A handwritten signature in black ink, reading "Donetta W. Ambrose". The signature is fluid and cursive, with the first name "Donetta" being more prominent.

Donetta W. Ambrose
Senior United States District Judge

cc: Demetrius Bailey
CP-7819
SCI Coal Township
1 Kelley Drive
Coal Township, PA 17866